

# State of Utah

## Title and Escrow Commission Meeting

### Meeting Information

Date: **April 9, 2007**

Time: **9:00am**

Place: **Backman Title**

167 E 6100 S, Ste 250

### Members

(x = excused)

#### Commission Members

Chairperson, Darwin L. Johnson, *Wasatch* xJoyce W. Clark, *Washington*

David M. Lattin, *Salt Lake*

Glen W. Roberts, *Utah*

R. Curt Webb, *Cache*

#### Department Staff

John E. "Mickey" Braun, Jr.

Perri Babalis

xDarrel Powell

Mark Kleinfeld

*Ass't Commissioner*

*AG Legal Counsel*

*Dir. Market Conduct*

*Admin. Law Judge*

Gerri Jones

Sheila Curtis

Jilene Whitby

*MC Examiner*

*MC Examiner*

*PIO/Recorder*

#### Others

Richard T. Maughan

David Moore

Paul Newton

Jack Marinello

Roy Poll

## Minutes

- I. **Welcome and Introductions** / Darwin L. Johnson, Chair  
Darwin began the meeting at 9:04 a.m.
- II. **Adoption of Minutes of Previous Meeting**  
Curt made a **motion** to adopt the minutes and David seconded it. The vote was unanimous.
- III. **Review & Concur with Licensee Report for January & February**  
Glen made a **motion** to adopt the report and David seconded it. The vote was unanimous.
- IV. **Number of Cases Open & Closed**
  - Sheila noted that there were a total of 198 cases open as of the March/2007 investigation report and 274 total violations in the March 2007 type of violation report. The investigation report includes all alleged violations. One investigation can have more than one alleged violation.
  - It was noted that Case 54167 was a notary issue. Title 46, dealing with notaries, has been incorporated into our statute. The department lets Fran Fish, the Notary Public Authentication Director of the Lt. Governor's office, know when there is a notary public violation.
  - Case 54256 was the result of a consumer being sold a piece of property without being made aware of a problem with the title and being given the chance to decide to accept it or not.
  - Gerri noted that the Fraud Division has two people assigned to title fraud issues. Title companies are assessed to support the Fraud Division. David thought that the department should consider assessing title agencies as well since they turn in fraud violations. Darwin noted that cases 54100-110 were all theft violations sent to the Fraud Division. Gerri said they were multiple violations from one agency.
  - Glen noted that in March there were 26 closed cases. Are we supposed to be concurring on all these cases? Mickey said just those that have been adjudicated and a penalty recommended. Not all cases result in an administrative action or adjudication. Curt noted that Case 54255 is an example where an escrow charge filing was misplaced then found.

- Glen noted that there are many cases that we should be moving through faster. Sheila said low priority cases are often put aside until they have more time to make the calls and send letters out. Fraud cases are often being worked on at the same time by the department and the Fraud Division. Gerri noted they have some very big, complicated cases involving builders and flipping that take a lot of their time.
- Jack Marinello talked to the Real Estate Division. They are concerned about people acting as real estate consultants without real estate licenses and asking for consulting fees to be paid at closing. This is illegal. Gerri thought this same requirement should be in the insurance code. Curt said the burden of proof of licensure should not fall on the shoulders of the escrow agent. Jack noted that the violation would be against the consultant without a license, not the escrow agent. David suggested asking ULTA to tell its members to be aware of this problem.

#### V. **Review & Concur with Enforcement Case Report**

Mark reported that 15 administrative actions had been taken against 15 licensees for failure to file their fees for escrow as required by Rules R592-3 and R592-4. These rules took effect October 17, 2006. Notification letters were sent out when the 15 did not meet the deadline. They were given until January 17, 2007 to get them in. Sheila reported that one of the agencies filed last week and should be taken off this list. The recommended penalty is \$500 each, to be paid within 10 days. Once the Commission concurs the notice of the fee will be sent out. All of the individuals have direct appointments with one underwriter. The others are agencies. Department staff confirmed that the standard fee for "Failure to File" is \$500. Curt made a **motion** to concur and all agreed. The motion passed unanimously.

#### VI. **Old Business**

##### • **Escrow Instructions - Update / Glen**

- Glen provided a revised draft of the escrow instructions updated with the changes suggested in the March meeting.
- Curt suggested they approve the form and then create a rule requiring the form be used in split closings. The rule should be simple. It should address the issue of minor and major deviations to the form. **Perri will find out what the Real Estate Division handles minor deviations to their forms.** Curt **moved** to adopt the Escrow Instruction Form and Glen seconded it. The vote was unanimous.
- Jack asked when the form would be introduced in the transaction? Glen noted that sometimes you don't know it is a split until the day of the closing. Jack said in other states this is disclosed up front with the escrow instructions. Glen said the disclosure and responsibilities are described in the form. Glen **moved** to instruct the department to write a rule regarding the use of this form in splits. Darwin asked if it would be a problem to expose the form to the industry for their use and input now? All agreed. Curt made the **motion** to make the form available for industry use at their option. David expressed concern that there would be increased confusion if the various parties to a deal made changes to the form without communicating it to one another. Curt said that at least the form provided standards the industry does not have now. David Moore thought that exposing it now would allow the industry to give input that might improve the form. **It should also be put on the department's website and given to ULTA to mail.** Include on the form a note that a rule is pending and we welcome input.
- Mickey **suggested the chair, Darwin, write a letter to ULTA and title agencies reference optional use of the form and suggestions for improvement.**
- Richard T. Maughan suggested making changes to the form by addendum. This would leave the basic language of the form intact. Jack suggested talking with UAR about having the form filled out at the time the contract is signed.
- Curt asked how long it would take to get this rule out. Mickey said the department would have a draft for the next meeting. From there it will take a minimum of 45 days

to go through the rulemaking process. Glen made the **motion** to ask the insurance department to draft a rule requiring the form be used in a split and David seconded it. The vote was unanimous. Curt made the **motion** to send Escrow Instruction Form to the title industry for their comments and Glen seconded it. The vote was unanimous. Glen will send an electronic version of the form to Jilene to send out and put on the web.

- **Update on Commission Member Replacement Process**

Several Commission members had received inquiries from individuals that seemed interested. Sheila thought that one had applied. Curt hoped some would come from Davis or Weber County.

- **Streamline Investigations – Update**

- Perri will get in touch with the Real Estate Division about how they handle cases that need to be resolved between commission meetings. The Title Commission's situation is different because it is required to impose penalties and the Department is required to concur with the penalties assessed..
  - Mickey suggested sending out a pre-approved boilerplate order on straightforward issues like C.E. and "Failure to Respond" issues. The department will create the language and have the Commission approve it.
  - Perri said a public meeting is required for the Commission to assess penalties. It can be done telephonically. Public notice of the meeting needs to be given. Glen said a closed meeting could be held during the regular monthly Commission meeting to handle this type of business. Curt said that almost every meeting of the Appraisers and Real Estate Board have hearings where people are invited in to plead their cases. If they fail to appear they are fined. Mickey asked the Commission to give the department examples of the types of cases they would like handled like this. Glen suggested "unlawful inducements," and failure by builders to charge a closing fee. Curt said clear-cut rule violations, like marketing violations.
- **Cash Sale Closings - Can they be split? / Darwin**
    - There is still a big debate as to whether or not cash split closings are legal.
    - Mickey noted that with all that had gone on in the past regarding this issue the only way to clear it up would be by rule.
    - Glen said the consumer's money needs to be protected. The rule needs to say that an escrow agent cannot close a transaction without a policy. He made a **motion** that the department prepare a rule disallowing acting as escrow agent when the buyer brings all cash to the closing. This would not prohibit a courtesy closing. Curt seconded the motion. Will the buyer and lender's money also be covered? Mickey said they would draft it that way. Curt said it should also allow an individual to give the check to the title company. The title company just can't run it through their account. Courtesy closing fees must also be allowed. The vote was unanimous.

## VII. New Business

- **Re-recording Deeds – Affidavit**

- Curt asked Mr. Maughan if it was incorrect that the recorder had to record everything that is brought to him? Mr. Maughan answered, "Not carte blanc." The court has directed that if the lien on the property is fraudulent then they are not to record it. "Minor" errors in the lien can be corrected. Some have defined "minor errors" very broadly. Therein lies the problem. If the county attorney won't back the county recorder then the recorder won't do it, and visa versa.

- **Review Property Profiles, Farm Reports, etc. / Darwin**

Did we eliminate the \$3 fee for Farm reports? Gerri said that he was confusing the \$3 fee allowed for self-promotional items and the permitted items in the marketing rule. The

"Schedule of Escrow Charges Form" eliminated the need to file a fee for farm packages but the rule needs to be updated to reflect that.

- **ID Clarification**

Fran Fish does not accept Medical Cards and other such ID cards to notarize a document. Driver's licenses, state photo ID cards, and U.S. passports are allowed.

- **Cancellation Fees - R590-153-5-A-2 / Darwin**

Darwin was concerned that the law and rule would be violated if the commitment fee was not paid. It was noted that the law only requires the fee be billed. It does not regulate the collection process. Curt thought the rule was alright.

## VIII. **Other Business from Committee Members**

- Mickey distributed a "Title and Escrow Commission Member Disclosure" to each Commission member to complete and return, as required by law.
- Mickey said that David suggested the "general public" member of the Commission not be county specific. He noted that this change would need to be done legislatively. Curt said the current wording in the law is the same for other commissions. Glen did not think there should be a county restriction on the general public member. Mickey will make the change in 2008 unless otherwise directed.
- Mickey - Regarding the dual license rule draft – It is missing a definition of “principal” in relation to “principals in a transaction”, and also the mechanics of seeking “expedited approval”.
  - The Commission took a break at 10:15 a.m. until Paul Newman could attend the meeting to help define "principal" as intended in SB199, Division of Real Estate and Title Insurance Related Amendments. The meeting was reconvened at 10:20 a.m.
  - Paul said that whoever hires you is the principal. Glen said this was to eliminate double dipping. It is whoever hires you or pays the money.
  - In regards to the dual license form Glen said that if the answer to #15 is "yes" then the individual cannot do business with the person in #3. This does not answer to whom you should send the transaction. This information needs to be added to the form and rule.
- Mickey - Regarding the dual license bulletin. We are trying to inform everyone that the dual license rule will be coming out in June. This rule will define "expedited approval" which the Commission will give. The preferred licensing method will be to go through the department, who will charge a \$25 fee. **The rule will be sent electronically to the Commission to review and approve.** Once we get the approval the rule will be sent to rulemaking.
- Glen – Regarding the Flip Bulletin, 2007-1. The question is, can the Closing Addendum Form still be used. The bulletin says the form is not approved. Can we eliminate the “unapproved language” on the bulletin? Glen made the **motion** to eliminate the wording after "Transaction" on the Subject line of the bulletin. David seconded it and the vote was unanimous. Gerri asked that the UAR clarify what it says is its intent: that each transaction must close and stand on its own.
- Paul offered their conference room through 12-10-07.
- At 11:30 a.m. Glen **moved** to adjourn and David seconded it.

IX. **Reminder:** Next Liaison Meeting

X. **Adjourned:**

XI. **Next Meeting:** May 14, 2007, 9a.m.

*Next Meeting*  
*9:00 a.m.*

<del>April 9, 2007</del>	August 13, 2007
May 14, 2007	September 10, 2007
June 11, 2007	October 9, 2007
July 9, 2007	November 12, 2007
December 10, 2007	